



CRS Report for Congress

Iraq: Government Formation and Benchmarks

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Summary

Elections in 2005 produced a permanent constitution and a broad-based but Shiite-led government that has been unwilling or unable to take major steps to reduce Sunni popular resentment. That assessment generally comports with findings of a congressionally mandated (P.L. 110-28, FY2007 supplemental appropriation) progress report released July 12, 2007. The Iraqi government is showing significant signs of fragmentation. See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

After deposing Saddam Hussein militarily in April 2003, the Bush Administration linked the end of U.S. military occupation to the adoption of a new constitution and national elections, tasks expected to take two years. Prominent Iraqis persuaded the Administration to accelerate the process, and sovereignty was given to an appointed government on June 28, 2004. A government and a permanent constitution were voted on thereafter, as stipulated in a March 8, 2004, Transitional Administrative Law (TAL).¹

Elections and Constitutional Referendum in 2005

The first election (January 30, 2005) was for a 275-seat transitional National Assembly, a provincial assembly in each of Iraq's 18 provinces (41 seats each; 51 for Baghdad), and a Kurdistan regional assembly (111 seats). The election system was proportional representation (closed list) – voters chose among “political entities” (a party, a coalition of parties, or individuals). A female candidate occupied every third position on electoral lists in order to ensure 25% female membership. A total of 111 entities were on the national ballot of which nine were multi-party coalitions. The cost was about \$250 million – \$130 million, funded by international donors including the United States, which paid \$40 million to improve Iraqi election capacity; \$42.5 million for monitoring by Iraqis (international monitoring was limited in all the elections in 2005); and \$40 million for political party development. In this and the December election, Iraqis abroad were eligible to vote. The International Organization for Migration (IOM) ran “out-of-

¹ Text available at [<http://cpa-iraq.org/government/TAL.html>].

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country voting” (OCV) in Australia, Canada, Denmark, France, Germany, Iran, Jordan, Sweden, Syria, Turkey, UAE, Britain, Netherlands, and the United States. About 275,000 Iraqi expatriates (Iraqi father) registered, and about 90% voted. OCV cost \$92 million (\$11 million was for U.S.-based voting), but no U.S. funds were spent for OCV.

In all the 2005 votes, vehicle traffic was banned, Iraq’s borders were closed, and polling centers were guarded primarily by Iraq’s security forces (ISF), with U.S. forces as backup. Violence did not materially disrupt the voting. The January election was dominated by the Shiite Islamist “United Iraqi Alliance” (UIA), the Kurds, and a few secular parties. The UIA bloc was underpinned mainly by the Supreme Council for the Islamic Revolution in Iraq (SCIRI) - which in May 2007 changed its name to the Supreme Islamic Council of Iraq (SICI) – and the Da’wa Party. The two main Kurdish parties, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP) offered a joint 165-candidate list. Interim Prime Minister Iyad al-Allawi filed a six-party, 233-candidate “Iraqi List” led by his secular Iraqi National Accord (INA) party. Sunni Arabs (20% of the overall population), perceiving electoral defeat, mostly boycotted and won only 17 seats spread over several lists and very few seats on the provincial councils (only one seat on Baghdad’s 51-seat provincial council, for example). During April and May 2005, the factions formed a government that U.S. officials said was not sufficiently inclusive of Sunnis, even though it had Sunnis as Assembly speaker, one of two deputy presidents, one of three deputy prime ministers, Defense Minister, and five other ministers. The two top positions went to PUK leader Jalal Talabani (President) and Da’wa leader Ibrahim al-Jafari (Prime Minister).

Permanent Constitution and Referendum. The elected Assembly was to draft a constitution by August 15, 2005, to be put to a referendum by October 15, 2005, subject to veto by a two-thirds majority of voters in any three provinces. The Assembly appointed (May 10, 2005) a 55-member drafting committee which included only two Sunni Arabs, prompting Sunni resentment, although 15 Sunnis were later added as committee members, with 10 more as advisors. The talks produced a draft on August 28 that set a December 31, 2007, deadline to resettle Kurds in Kirkuk and to hold a referendum on whether Kirkuk will join the Kurdish region (Article 140); designated Islam “a main source” of legislation and said no law can contradict the “established” provisions of Islam (Article 2);² set a 25% electoral goal for women (Article 47); allowed families to choose which courts to use for family issues such as divorce and inheritance (Article 39); made only primary education mandatory (Article 34); and said that the federal supreme court would include Islamic law experts and civil law judges and experts (Article 89). These provisions concerned many women who fear that too much discretion was given to males of their families.

The major disputes centered (and continue) on the draft’s provision allowing two or more provinces together to form new autonomous “regions” and on provisions to allocate oil revenues. Article 117 allowed each “region” to organize internal security forces, which would legitimize the fielding of sectarian (presumably Shiite) militias, in addition to the Kurds’ *peshmerga* (allowed by the TAL). Article 109 required the central government to distribute oil and gas revenues from “current fields” in proportion to population, and gave “regions” a role in determining allocation of revenues from new

² [<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>].

energy discoveries. Sunni negotiators opposed the draft on these grounds; Sunni-dominated areas of Iraq have few oil or gas deposits, although some oil fields are said to lie in Anbar Province. Article 62 established a “Federation Council,” a second chamber of size and powers to be determined by subsequent law (not passed, to date).

With contentious provisions unresolved, Sunnis registered in large numbers (70%-85%) to try to defeat it, prompting a U.S.-mediated agreement (October 11) providing for a panel to propose amendments within four months after a post-December 15 election government took office (Article 137). The amendments would require a majority Assembly vote of approval and, within another two months, would be put to a referendum under the same rules as the October 15 referendum. The compromise did not reduce Sunni opposition and, in the referendum, the Sunni provinces of Anbar and Salahuddin had a 97% and 82% “no” vote, respectively. Mostly Sunni Nineveh province voted 55% “no,” which meant that the constitution was adopted (only two provinces, not three, voted “no” by a two-thirds majority).

December 15, 2005 Elections. The next step was the election of a permanent government, to take place on December 15, 2005, with the new government to take office by December 31, 2005. In these elections, under a formula that attracted Sunni participation, each province contributed a pre-determined number of seats to a “Council of Representatives” (COR). Of the 275-seat body, 230 seats were allocated this way, with 45 “compensatory” seats for entities that would have won additional seats had the election constituency been the whole nation. 361 political “entities” registered: 19 were coalition slates (spanning 125 parties), and 342 were other “entities” (parties or individuals). The UIA slate formally included Sadr’s faction as well as other hard line Shiite parties including *Fadilah* (Virtue). Former Prime Minister Allawi’s mostly secular 15-party “Iraqi Nation” slate was broader than his January 2005 list, adding several smaller secular parties. The Kurdish alliance remained roughly intact.

The major Sunni slate was a three-party “Iraq Consensus Front” led by the Iraq Islamic Party (IIP), which had entered but then withdrew from the January elections. Another major Sunni faction (Saleh al-Mutlak’s National Iraqi Dialogue Front) ran separately. The hardline Muslim Scholars Association (MSA) did not participate, although it did not, as it had in January, call for a Sunni boycott. Violence was minor because Sunni insurgents, supporting greater Sunni representation, facilitated the voting. As shown in the table, results suggest that voters chose lists representing their sects and regions, not ideological platforms.

The COR was inaugurated on March 16, and was quickly engulfed in factional wrangling. With 181 seats combined (nearly two thirds of the COR), the UIA and the Kurds continued to dominate. However, Kurdish and other opposition caused the UIA to agree to Jafari’s Da’wa deputy, Nuri Kamal al-Maliki, as Prime Minister, who was perceived as more sympathetic to Kurdish national aspirations. On April 22, the COR approved Talabani to continue as president, and selected his two deputies — SICI’s Adel Abd al-Mahdi (incumbent) and Consensus Front/IIP leader Tariq al-Hashimi. Another Consensus Front figure, the hardline Mahmoud Mashhadani (National Dialogue Council party), was chosen COR speaker. Maliki won COR majority vote approval of a 36 member cabinet (including deputy prime ministers) on May 20, 2006. Three key slots (Defense, Interior, and National Security) were not filled permanently until June 8 because of infighting. Kurdish official Barham Salih and Sunni Arab Salam al-Zubaie

are deputy prime ministers. Of the 34 ministerial posts, there are eight Sunnis; seven Kurds; eighteen Shiites; and one Christian. Four are women.

Iraqi Performance on Major “Benchmarks” and U.S. Policy

In August 2006, the Administration and the Iraqi government agreed on a series of “benchmarks” that, if adopted and implemented, should achieve reconciliation among the major communities. Congress subsequently made progress on these and other benchmarks (a total of eighteen) – as certified in July 15 and September 15, 2007 Administration reports – a requirement for the United States to provide \$1.5 billion in Economic Support Funds (ESF) to the Iraqi government, under Section 1314 of the FY2007 supplemental appropriation (P.L. 110-28). If little or no progress is made, the president may provide the aid if he provides written justification for doing so. A separate assessment of Iraqi progress is mandated to be provided by the Comptroller General, and an assessment of the Iraqi security forces (ISF) is to be performed by an outside commission (headed by ret. Gen James Jones). As noted in the July 15, 2007 progress report (released July 12) and discussed below, none of the most significant political reconciliation benchmarks have been completed, but several are in advanced stages of negotiation and some of the minor political milestones showed progress. The dates below reflect the original political benchmarks (and deadlines) as pledged by Iraqi leaders.

(1) *By September 2006, formation of a committee to review the constitution under the special amendment process (Article 137) promised; approval of a law to implement formation of regions; approval of an investment law; and approval of a law establishing the Independent High Electoral Commission (IHEC).* The constitution review committee was appointed in November 2006, and made partial recommendations in late May 2007; it was given a new deadline of July 2007 (beyond the May 15 deadline) to finish its draft. Major decisions on presidential powers, powers of individual regions, and on the status of Kirkuk (which the Kurds want to affiliate with their region) await compromise by major factions. An investment law (not one of the P.L. 110-28 benchmarks) was adopted in October 2006. The regions law was adopted October 12, 2006, although, to mollify Sunni opposition, major factions agreed to delay the formation of new regions for 18 months. The IHEC law was passed on January 23, 2007, and the nine election commissioners have been appointed.

(2) *By October 2006, approval of a provincial election law; and approval of a new oil law.* No agreement has been reached on a provincial election law – considered key to easing Sunni resentment because the current councils, which expire in January 2009, have few Sunnis on them. (The Sunnis boycotted the January 2005 elections that formed the councils.) A draft law stipulating the powers of the provinces has received two readings in parliament, although differences remain on the powers of the provincial governors and related issues.

On February 26, 2007, Iraq’s cabinet passed a draft framework oil law that would set up a broad Federal Oil and Gas Council that would review exploration contracts signed with foreign energy companies, including those signed by Iraq’s regions. However, implementing laws need to be adopted simultaneously, including a law on sharing oil revenues among Iraq’s communities, a law regulating the dealings with foreign energy firms, and a law delineating how Iraq’s energy industry will run (“INOC law” - Iraq National Oil Company). The Kurds vigorously oppose the draft INOC law, which the Kurds say was drafted secretly, because it puts 93% of Iraq’s oil fields under state control. Poorer Shiites opposed the draft framework law on the grounds that it would yield too much control over Iraq’s main natural resource to foreign firms – a provision of the draft gives seats on the Federal Oil and Gas Council to foreign energy firms. Sunnis oppose it because the Shiites and Kurds would have determinative power over

energy contracts and likely revenue distribution. Some movement came in late June 2007 when the Kurds reportedly agreed to a 17% share of oil revenues collected, to be deposited in a separate account at the Central Bank.

(3) *By November 2006, approval of a new de-Baathification law and approval of a flag and national anthem law.* The De-Baathification reform law remains stalled; members of the Supreme National De-Baathification Commission, claiming support from revered Shiite leader Ayatollah Ali al-Sistani, expressed opposition to a draft reform law reportedly agreed to in late March 2007 by President Talabani and Prime Minister Maliki. The draft would have allowed all but members of the three highest Baath Party levels to return to their jobs or obtain pensions. However, on April 7, 2007, Maliki ordered pensions be given to senior officers in the Saddam-era military and permission for return to service of lower ranking soldiers.

(4) *By December 2006, approval of laws to curb militias and to offer amnesty to insurgent supporters.* No progress is evident to date because militias, concerned about the general lack of security, are unwilling to disarm. Others say the Shiite-led government fears that Sunnis are plotting to return to power and that offering amnesty to Sunni insurgent supporters would only accelerate that process. U.S. officials say Maliki has verbally committed to a militia demobilization program, and an executive director of the program was named on May 12, 2007, but committee members have not yet been appointed and a demobilization work plan is not drafted. The July 12, 2007 progress report says that the pre-requisites for these laws are not in place, given the security environment.

(6) *By February 2007, the formation of independent commissions to oversee governance.* No progress has been reported to date. (This is not one of the P.L. 110-28 benchmarks.)

(8) *By April 2007, Iraqi assumption of control of its military.* Six of the ten Iraqi Army divisions are now under Iraqi control. (The P.L. 110-28 benchmarks do not include this milestone, but instead require progress creating units capable of operating independently. Progress was judged unsatisfactory in the July 12 report. Other security benchmarks and progress on those are discussed in CRS Report RL31339.)

(10) *By September 2007, Iraqi security control of all 18 provinces.* Iraq Security Forces now have security control for the provinces of Muthanna, Dhi Qar, Najaf, Maysan, Irbil, Sulaymaniyah, and Dohuk - the latter three are Kurdish provinces turned over May 30, 2007. (Not a P.L. 110-28 benchmark.)

(11) *By December 2007, Iraqi security self-reliance.* (Not a P.L. 110-28 benchmark.)

Other security related benchmarks required by P.L. 110-28 center around reducing sectarian behavior in the Iraqi security forces and in assisting the Baghdad security plan (for example providing three Iraqi brigades and an unspecified number of police commandos and regular police to Baghdad, setting up joint security stations, and making available over \$10 billion in reconstruction funds). The July 12, 2007 progress report gives Iraq generally favorable assessments of cooperation with the Baghdad security but almost universally unsatisfactory reviews on such indicators as reducing militia influence, ensuring even handed law enforcement by the security forces, and excluding political/sectarian influence from military operations.

Political Fragmentation. As U.S. pressure on the Iraqi government grows while sectarian violence continues, splits within the power structure are widening; some believe it might collapse. In March 2007, the Fadilah Party left the UIA on the grounds that it is not represented in the cabinet. Six Sadrist cabinet members (Health, Transportation,

and Agriculture; as well as three ministers of state) resigned on April 16, 2007 and Maliki has named independent Shiites to replace them (although they have not been confirmed by the COR, to date). Sadr himself - formerly a strong ally of Maliki - returned to Iraq from Iran in May 2007 (he might now have returned to Iran), challenging the U.S. "occupation." The Sadr bloc remained in parliament until the June 13, 2007 second bombing of the Grand Mosque in Samarra (the first was in February 2006) prompted a renewed Sadrist boycott.

In April 2007, President Bush reportedly intervened to (temporarily) forestall a resignation of the five Sunni Consensus Front cabinet members. The Front believes Maliki is unwilling or unable to advance reconciliation and its relations with Maliki continue to be highly strained to the point where some Front members say they want a vote of no-confidence against Maliki. The Front, as well as the other main Sunni bloc (Dialogue Front), boycotting parliament (55 total seats) because of the COR's vote on June 12, 2007, to require Mashhadani's resignation as COR speaker because of alleged physical intimidation of parliamentarians. Yet, the COR has been able to obtain a quorum (138 members attending) in early July 2007, and it has decided to reduce its summer recess to the month of August (from July and August). Adding to Sunni distrust is the June 2007 arrest warrant issued for Culture Minister Asad al-Hashimi, a Sunni, for allegedly orchestrating a failed assassination attempt against Ummah Party leader Mithal al-Alusi (whose two sons were killed in the plot). That warrant in June 2007 caused the Front to suspend the participation of its five ministers in the cabinet.

Table 1. Election Results (January and December 2005)

Slate/Party	Seats (Jan. 05)	Seats (Dec. 05)
UIA (Shiite Islamist); Sadr formally joined list for Dec. vote (SCIRI~30; Da'wa~28; Sadr~30; Fadilah (Virtue)~15; independent - 25)	140	128
Kurdistan Alliance (PUK and KDP)	75	53
Iraqis List (secular, Allawi); added some mostly Sunni parties for Dec. vote	40	25
Iraq Consensus Front (Sunni). Main Sunni bloc; not in Jan. vote	—	44
National Iraqi Dialogue Front (Sunni, Saleh al-Mutlak) Not in Jan. vote	—	11
Iraqi National Congress (Chalabi). Was part of UIA list in Jan. 05 vote	—	0
Iraqis Party (Yawar, Sunni); Part of Allawi list in Dec. vote	5	—
Iraqi Turkomen Front (Turkomen, Kirkuk-based, pro-Turkey)	3	1
National Independent and Elites (Jan)/Risalyun (Mission, Dec) pro-Sadr	3	2
People's Union (Communist, non-sectarian); on Allawi list in Dec. vote	2	—
Kurdistan Islamic Group (Islamist Kurd)	2	5
Islamic Action (Shiite Islamist, Karbala)	2	0
National Democratic Alliance (non-sectarian, secular)	1	—
Rafidain National List (Assyrian Christian)	1	1
Liberation and Reconciliation Gathering (Sunni, secular)	1	3
Ummah (Nation) Party. (Secular, Mithal al-Alusi, former INC activist)	0	1
Yazidi list (small Kurdish, heterodox religious minority in northern Iraq)	—	1

Number of polling places: January: 5,200; December: 6,200.

Eligible voters: 14 million in January election; 15 million in October referendum and December.

Turnout: January: 58% (8.5 million votes)/ October: 66% (10 million)/ December: 75% (12 million).